

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ESTHER KIM, a/k/a GAEHO KIM,

Plaintiff-Appellant,

v

CHANG SOO CHOI, MD, and CHOI'S  
COSMETIC/LASER SURGERY,

Defendants-Appellees.

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UNPUBLISHED  
February 27, 2007

No. 271435  
Oakland Circuit Court  
LC No. 2004-063055-NH

Before: Owens, P.J., and Neff and White, JJ.

PER CURIAM.

Plaintiff Esther Kim appeals by right the final order of the Oakland Circuit Court granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(7) and (C)(8). We reverse.

Defendant Chang Soo Choi is a medical doctor practicing in southeastern Michigan.<sup>1</sup> Defendant asserts that he is a specialist in cosmetic surgery and devotes his entire practice to this specialty. The American Board of Cosmetic Surgery (ABCS) certified defendant in cosmetic surgery in 1982. Defendant is also a member of the American Medical Association (AMA). In February 2005, the AMA website listed defendant's self-designated primary specialty as plastic surgery, and included no board certifications in any specialty.

On July 3, 2003, defendant performed a blepharoplasty on plaintiff. After the surgery, plaintiff complained that she could not close her eyes. Although defendant apparently told her that her complaints would resolve with time, plaintiff sought further treatment from Dr. Michael Byun, a plastic surgeon in Chicago, Illinois. On July 8, 2003, Byun performed another blepharoplasty on plaintiff, apparently to correct the damage caused by the July 3 procedure.

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<sup>1</sup> At the time of the events leading to the present claim of medical malpractice, Choi practiced with "Choi's Cosmetic Laser Surgery." We use the term "defendant" to refer to Choi and "defendants" to refer to both Choi and the business entity Choi's Cosmetic/Laser Surgery.

Byun received his medical degree in 1992 and completed his residency in plastic surgery. He was certified by the American Board of Plastic Surgery in 2002. When asked if a separate board certification existed for cosmetic surgeons, Byun noted that the American Board of Medical Specialties did not recognize a separate board certification for cosmetic surgeons. When asked if the ABCS existed, he replied,

That is a made-up board by the nonplastic surgeons. Back many years ago, they could not practice as plastic surgeons, so my understanding was nonplastic surgeons founded the organization. And they named it as [sic] American Board of Cosmetic Surgery. But it is not recognized by the main society of medical field [sic].

Byun noted that he acquired this information “[f]rom school and from the university and from the colleagues.”

On December 16, 2004, plaintiff filed a medical malpractice cause of action against defendants, alleging that as a result of defendant’s negligence during the July 3 surgical procedure, she has scars, asymmetry, and disfigurement. With her complaint, plaintiff filed an affidavit of merit executed by Byun. In the affidavit, Byun noted that he was board certified in his specialty of plastic surgery and that he spent over half his professional time in the practice of plastic surgery.

Defendants moved for summary disposition pursuant to MCR 2.116(C)(7) and (C)(8), which the trial court granted. Specifically, the trial court found that Byun did not meet the expert witness requirements set forth in MCL 600.2169 and, therefore, the affidavit of merit by Byun that plaintiff submitted with her complaint did not meet the statutory requirements for an affidavit of merit set forth in MCL 600.2912d. Accordingly, the trial court ruled, plaintiff failed to initiate a medical malpractice claim within the period of limitation, and her cause of action should be dismissed with prejudice.

Plaintiff argues that the trial court’s order granting summary disposition was in error because her attorney reasonably believed that Byun was qualified to testify as an expert to the standard of care to which defendant was held when he committed the alleged malpractice. Accordingly, plaintiff argues, she satisfied the statutory requirements of MCL 600.2912d when she filed Byun’s affidavit of merit with her medical malpractice complaint. We agree. We review de novo a trial court’s grant of a motion for summary disposition pursuant to MCR 2.116(C)(7) and (C)(8). *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

A plaintiff filing a medical malpractice complaint must provide an affidavit of merit “signed by an expert who the plaintiff’s attorney *reasonably believes* meets the requirements of MCL 600.2169.”<sup>2</sup> *Grossman v Brown*, 470 Mich 593, 598; 685 NW2d 198 (2004). When

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<sup>2</sup> MCL 600.2912d(1) states:

[T]he plaintiff in an action alleging medical malpractice or, if the plaintiff is represented by an attorney, the plaintiff’s attorney shall file with the complaint  
(continued...)

explaining the requirements of MCL 600.2169(1)(a), our Supreme Court noted, “if a defendant physician is a specialist, the plaintiff’s expert witness must have specialized in the same specialty as the defendant physician at the time of the alleged malpractice.” *Woodard v Custer*, 476 Mich 545, 560-561; 719 NW2d 842 (2006). Our Supreme Court also explained that if the defendant physician was board certified, “MCL 600.2169(1)(a) requires that the expert witness ‘must be’ a specialist who is board certified in the specialty in which the defendant physician is also board certified.” *Halloran v Bhan*, 470 Mich 572, 579; 683 NW2d 129 (2004).

However, our Supreme Court also concluded that, by including this “reasonable belief” provision, the Legislature “apparently chose to recognize that at the first stage, in which the

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an affidavit of merit signed by a health professional who the plaintiff’s attorney reasonably believes meets the requirements for an expert witness under [MCL 600.2169]. The affidavit of merit shall certify that the health professional has reviewed the notice and all medical records supplied to him or her by the plaintiff’s attorney concerning the allegations contained in the notice and shall contain a statement of each of the following:

- (a) The applicable standard of practice or care.
- (b) The health professional’s opinion that the applicable standard of practice or care was breached by the health professional or health facility receiving the notice.
- (c) The actions that should have been taken or omitted by the health professional or health facility in order to have complied with the applicable standard of practice or care.
- (d) The manner in which the breach of the standard of practice or care was the proximate cause of the injury alleged in the notice.

MCL 600.2169(1)(a) includes the following requirements for an expert witness in a medical malpractice action:

- (1) In an action alleging medical malpractice, a person shall not give expert testimony on the appropriate standard of practice or care unless the person is licensed as a health professional in this state or another state and meets the following criteria:
  - (a) If the party against whom or on whose behalf the testimony is offered is a specialist, specializes at the time of the occurrence that is the basis for the action in the same specialty as the party against whom or on whose behalf the testimony is offered. However, if the party against whom or on whose behalf the testimony is offered is a specialist who is board certified, the expert witness must be a specialist who is board certified in that specialty.

lawsuit is about to be filed, the plaintiff's attorney only has available publicly accessible resources to determine the defendant's board certifications and specialization." *Grossman, supra* at 599. Essentially, this "reasonable belief" provision recognizes that when a plaintiff files a complaint and accompanying affidavit of merit, she has not yet had the benefit of the full breadth of resources available through discovery (e.g., depositions, interrogatories, etc.) that would permit her to determine a defendant's board certifications and areas of specialization.

Our Supreme Court recently concluded that, under a set of circumstances similar to those presented in this case, a plaintiff's attorney reasonably believed that a physician signing an affidavit of merit met the requirements set forth in MCL 600.2169. In *Grossman, supra* at 597, the plaintiff obtained an affidavit of merit signed by a board certified general surgeon who specialized in vascular surgery. However, the defendant physician was board certified in general surgery and possessed a certificate of special qualifications in vascular surgery. *Id.* at 595. Instead of considering whether the plaintiff's expert met the criteria set forth in MCL 600.2169, the *Grossman* Court concluded that the plaintiff had a reasonable belief that the physician signing the affidavit of merit met the requirements of MCL 600.2169, because "plaintiff's attorney consulted the AMA website, which supplied him with information that defendant [] was only board certified in general surgery and that there is no vascular surgery board certification. Further, counsel consulted . . . his expert, who reiterated that there is no vascular surgery board certification." *Id.* at 600. Therefore, the *Grossman* Court concluded, plaintiff's affidavit of merit satisfied the requirements of MCL 600.2912d. *Id.* at 599-600.

After considering the information available to plaintiff's attorney at the time she filed the complaint and affidavit of merit, we conclude that plaintiff's attorney reasonably believed that Byun would satisfy the requirements for an expert witness set forth in MCL 600.2169. Like the plaintiff's attorney in *Grossman*, plaintiff's attorney consulted the AMA website, which listed defendant's self-designated primary specialty as plastic surgery, the same specialty as plaintiff's expert, Byun.<sup>3</sup> Admittedly, plaintiff's attorney was aware that defendant was certified by the ABCS at the time plaintiff filed her complaint and affidavit of merit. However, defendant had not included this certification in his public AMA website listing.<sup>4</sup> In addition, Byun opined that the ABCS was a board originally "made up" by non-plastic surgeons and was not recognized by

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<sup>3</sup> Plaintiff included with her response to defendant's motion for summary disposition a copy of defendant's membership information from the AMA website printed approximately two months after she filed her complaint. The website listed defendant's self-designated primary specialty as plastic surgery.

<sup>4</sup> One could reasonably question whether defendant is properly certified by the ABCS. The ABCS requires that, to be certified in cosmetic surgery, a physician must first be certified by one of several enumerated boards recognized by the American Board of Medical Specialties, the Bureau of Osteopathic Specialists of the American Osteopathic Association, the Royal College of Physicians and Surgeons of Canada, or the American Board of Oral and Maxillofacial Surgery. Defendant's curriculum vitae does not indicate that defendant was certified in any specialty other than cosmetic surgery, and it does not list a residency in any specialty other than general and plastic surgery.

the main society of medical fields.<sup>5</sup> Considering the information available to plaintiff's attorney from Byun and from the AMA website at the time plaintiff filed her affidavit of merit, plaintiff's attorney's belief that Byun would meet the expert witness requirements set forth in MCL 600.2169 was reasonable. Accordingly, plaintiff satisfied the requirements of MCL 600.2912d when she filed her complaint and affidavit of merit. Therefore, the trial court erroneously dismissed plaintiff's medical malpractice cause of action.

Because the affidavit of merit that plaintiff submitted with her complaint satisfies the statutory requirements of MCL 600.2912d, we will not consider plaintiff's other arguments on appeal.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald S. Owens

/s/ Janet T. Neff

/s/ Helene N. White

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<sup>5</sup> This conclusion would be consistent with, and reinforced by, the absence of such a certification on defendant's AMA website listing.